IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 14 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
JYOTSANA H. TOPRANI, - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR B.D. Karia, for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mrs. Mona Bhatt, learned counsel for the Revenue applicant. Mr. B.D. Karia, learned counsel for the assessee.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following question, at the instance of the Revenue, for opinion of this Court in I.T. Appeal No. 3094/Ahd/1993 relating to Assessment Year 1989-90;

> 'Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the assessee who was having a pathological laboratory was carrying on business as an Industrial Undertaking which produced an article or thing, and was entitled to investment allowance u/s. 32-A of the Act on the new machinery installed in her clinic ?'

3. The assessee claimed investment allowance under Section 32A of the Act in respect of plant and machinery installed and used in Pathological Laboratory run by the assessee. The Assessing Officer disallowed the said claim on the ground that the assessee derives income from profession and there is no question of allowing investment allowance. On appeal, the Deputy Commissioner of Income Tax (Appeals) held that the Assessing Officer has rightly disallowed the claim of the assessee and confirmed the disallowance made by the Assessing Officer. However, in a final appeal before the Tribunal, the investment allowance was granted in favour of the assessee.

4. In Income Tax Reference No. 237 of 1995, answering an identical question, we have held that if plant and machinery are purchased for use in a Pathological Laboratory, then the assessee would be entitled to investment allowance. In view of the said Judgment dated 1.8.2006 in Income Tax Reference No. 237 of 1995 between Commissioner of Income Tax Vs. Suresh Amin Family Trust, we decide the Reference against the interests of the Revenue. The matter stands disposed of.

[R.S. Garg, J.]

rmr. [M.R. Shah, J.]